



## **Six Points to Consider on Employment Law for Corporate Transactions**

Most corporate solicitors have a good working knowledge of Irish Employment Law. However it is sometimes possible to overlook certain aspects in a corporate transaction which could lead to major issues for both the corporate solicitor and their client.

### 1. Intra-group transfers/TUPE

The TUPE applies to intra-group transfers which might take place before or after a share sale.

It is important to make sure that clients are aware that the dismissal of an employee can be automatically unfair if they are dismissed before or after an intra-group transfer and their dismissal is connected with that transfer.

It is important that clients would need to be advised of their legal requirement to inform and possibly consult with the employees.

An employee who is subject to an intra-group transfer will have the same protections as if they had been transferred to a third party.

### 2. Conditions Precedent

If there is a condition precedent in a deal which provides that senior employees must enter into a new employment contract or a settlement agreement it is important to ensure that sufficient time is allowed for them to seek independent legal advice. It would be important to consider whether your client should pay towards such advice.

### 3. Restrictive Covenence

It is essential to consider whether post transaction restrictive covenants are necessary to protect the business. Are potential customers covered by the restrictive covenants?

It is important to look to see if any current restrictive covenants are likely to be enforceable in a post deal scenario. Do they provide the necessary level of protection? Will you need fresh restrictive covenants? Will you need to have new contracts in place to deal with any new restrictive covenants which may be relevant?



#### 4. Holiday Costs

When drafting clauses about apportionment of holiday costs for the buyer/seller of a business it is relevant to remember that the European Court of Justice has ruled that certain commission payments must be included in holiday pay

#### 5. Disputes/Beware of Limitation Periods

Normally where an employee has left more than six months prior to a transfer or sale of business and have not filed a claim before the WRC employers and their advisors may assume that there will be no claim. There is provision to extend time up to twelve months. If a National Minimum Wage claim comes in even if the employee is left they can claim for any pay reference period in the previous 12 months and can bring a claim back for six years.

#### 6. Changing Terms and Conditions of Employment

It is important to check contracts of employment and staff handbooks to determine whether changes can be made to existing employees contracts of employment and if so to what extent. Under TUPE it is possible to make certain changes but there are strict rules relating to same. You also need to consider what “promises” might have been made to employees or what changes in working patterns may now have changed from their contract of employment and where there would be a custom and practice within the particular business.

#### Conclusion

In the heat of a commercial transaction involving the sale or transfer of a business sometime the employment law issues are missed. Unfortunately some companies have very poor personnel files. It is important to ensure that checks are made with employees that the entity acquiring a business knows what the employees believe their terms and conditions are and whether they have any documentation of which might be different from the documentation that the seller is providing.



**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*\*In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**